

Muhammad Ali and Others Vs Emperor

Court: Calcutta High Court

Date of Decision: Jan. 14, 1932

Acts Referred: Penal Code, 1860 (IPC) " Section 366, 366A, 368

Citation: 145 Ind. Cas. 925

Hon'ble Judges: Panckridge, J; M.C. Ghose, J

Bench: Division Bench

Judgement

Panckridge, J.

This is an appeal by five persons who were charged of offences punishable under Sections 366, 366-A and 368, Indian Penal Code. They were convicted of the charge u/s 366, but acquitted on the charges under Sections 366-A and 368. Another man was charged

under Sections 366-A. and 368, but was acquitted on both those charges. In respect of offences punishable under Sections 366 the present

appellants have been sentenced to various terms of imprisonment.

2. The case for the prosecution appears to have been that a certain young girl who was living in the, same bari with her father was forcibly seized

by a party of whom some of the accused persons are members and was taken to the house of accused No. 1. While she was there an attempt was

made to force her into marriage with accused No 3. She did not consent and she was thereafter taken from place to place and she was finally

discovered in the house of a woman who is said to be a woman of the town. The charge u/s 366 is concerned with the original forcible seizure of

the girl. The other charges were based upon incidents subsequent to that seizure. The accused have been acquitted of the charges under Sections

366-A and 368 and I need not deal with them further. But I am by no means convinced that it was convenient or proper to try the accused on

those charges at the same time as they were being tried on the charges u/s 366. I now turn to the actual charge u/s 366. It runs as follows:

That you on or about August 31, 1930, at Nijkuranshi kidnapped Mastura Bibi from the lawful guardianship of her father Majidulla or abducted

her with intent that she might be compelled to marry Husmutulla against her will or knowing it to be likely that she would be forced or seduced to

illicit intercourse.

3. This is the charge upon which the accused were tried and upon which they have been found guilty and in respect of which they have been

sentenced. To my mind the charge in this form offends against all the principles of criminal pleading. It seems to me elementary that it should appear

plain whether the accused persons are being charged with kidnapping or are being charged with abduction and similarly it should appear clearly

whether the intent alleged was an intent to compel the a victim to man y against her will or whether t the kidnapping-or abduction was with the 1

knowledge that it was likely that the girl would be forced or seduced to illicit intercourse. If one looks to this charge one will, find that various

combinations of possible circumstances which can be covered by it are numerous. It is perfectly true that the prosecution may be in some doubt in

certain cases whether the offence disclosed is that of kidnapping or that of abduction. If this is so, nothing is easier than to frame two charges and

take the verdict of the Jury upon them both. What has happened in this case is a good example of the mischief that can arise if that rule is not

observed. Evidence was called and presumably reliance was sought to be placed by the prosecution on that evidence as to the age of the girl. The

Jury have brought in a verdict of guilty u/s 366, but whether they have brought in that verdict because they considered the accused guilty of the

offence of kidnapping or of the offence of abduction no one is able to say. As I have pointed out in the course of the argument it might well be that

the importance of an alleged misdirection in the charge would depend entirely upon which view of the facts the jury had taken. I see that a view

similar to my own was taken by this Court in the case of Mafizaddi v. Emperor 101 Ind. Cas. 935 : AIR 1927 Cal. 611 : 28 Cr. EJ 805 where

Cuming and Graham, JJ., laid down that the ingredients of the two offences are different and that the accused is entitled to know which of the

charges he is asked to meet They add that the two offences are distinct offences and that separate charges should have been framed if it was

desired to charge the accused with both the offences. I entirely agree with this view. The learned Deputy Legal Remembrancer has drawn our

attention to the case of Prafulla Kumar Bose Vs. Emperor, . In that case it was argued that it was illegal to frame one count or charge setting out

both the offences in the alternative and the court observed:

We are not prepared to say that a charge of the latter character contravenes the requirements of the law, far less that there was the least prejudice

caused t o the appellant thereby.

4. That was doubtless because the learned Judge specifically ascertained whether the Jury considered the accused guilty of kidnapping or guilty of

abduction. Having ascertained that the Jury were of opinion that he should be convicted of kidnapping, but acquitted of abduction the court

proceeded to deal with the accused on that basis. Therefore whatever the defect in the charge may have been steps were taken to cure it. There

the difficulty under which we labour as to the nature of the offence of the accused did not arise. In the circumstances we are of opinion that this

case must go back for a retrial and we direct that the accused be tried on a charge framed in accordance with the principles I have enunciated, that

is to say, if it is desired to charge him with both kidnapping and abduction, those offences must be made a subject in separate charges. Similarly if it

is desired to charge him with abduction either with intent that the girl might be compelled to marry against her will or forced or seduced to illicit

intercourse, separate charges must be framed contemplating both sets of circumstances. But, in my opinion, having regard to the unsatisfactory

state of the evidence as to the girl's age and having regard to the fact that the accused persons have already been acquitted of charges under ss.

366-A. and 368 the best course will be for the accused to be re-tried on the simple charge of abducting Mastura Bibi with intent that "she might be

compelled to marry Husnutulla against her will.

5. We therefore allow the appeal, set aside the conviction and sentence and direct re-trial in the manner I have indicated. The recommendation that

I have made with regard to limiting the number of charges to one is in no sense mandatory, but merely the result of a first impression of the

evidence. If the Public Prosecutor or the court thinks fit in the interest of justice to try the case on a specific charge of abduction knowing it to be

likely that the girl would be forced or seduced to illicit intercourse he will use his own discretion in the matter. Pending the re-trial the appellants will

be released on bail to the satisfaction of the Deputy Commissioner.

M.C. Ghose, J.

6. I agree.